

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Petitioner, Christopher Berlin Roberts, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. He moves for default based on Respondent's alleged untimely service of an opposition to Petitioner's motion for leave to amend.

Pursuant to the court’s April 11, 2007 order, Respondent’s opposition to Petitioner’s motion for leave to amend was due no later than June 11, 2007. On June 8, 2007, Respondent timely filed the opposition. The proof of service indicated Petitioner was served by mail on the same date at his address at Calipatria State Prison (“Calipatria”). On June 22, Respondent again served Petitioner with the same documents at his address at Salinas Valley State Prison (“Salinas Valley”). Based on Petitioner’s motion for default, it is apparent Petitioner received the second service but not the first. Petitioner argues Respondent engaged in misconduct by serving him long after the opposition was filed with the court. The court disagrees. From the docket it

1 appears Petitioner was moved from Calipatria to Salinas Valley. He did not file a notice of  
2 change of address as required by local rules. *See* Civ. Loc. R. 83.11(b). Respondent served  
3 Petitioner at Calipatria, his address of record. Apparently when Respondent realized this was no  
4 longer a good address, he served Petitioner at his new address in Salinas Valley. Accordingly,  
5 the court disagrees that Respondent engaged in any kind of misconduct with regard to the  
6 service of his opposition papers.

7 For the foregoing reasons, **IT IS HEREBY ORDERED:**

8 1. Petitioner's motion for default is **DENIED**.

9 2. Petitioner shall forthwith serve and file a notice of change of address to reflect his  
10 correct address for service.

11 **IT IS SO ORDERED.**

12  
13 DATED: October 17, 2007

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15   
M. James Lorenz  
United States District Court Judge

16 COPY TO:

17 HON. LOUISA S. PORTER  
18 UNITED STATES MAGISTRATE JUDGE

19 ALL PARTIES/COUNSEL

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